

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CRYSTAL GAYLE ARAGON

RESPONDENT,

**v.
MISSOURI DEPARTMENT OF
HEALTH AND SENIOR SERVICES**

APPELLANT.

DOCKET NUMBER WD72751

DATE: May 10, 2011

Appeal From:

Lafayette County Circuit Court
The Honorable Dennis A. Rolf, Judge

Appellate Judges:

Division Two: James M. Smart, Jr., Presiding Judge, Mark D. Pfeiffer, Judge and Cynthia L. Martin, Judge

Attorneys:

Kendall R. Garten, Blue Springs, MO, for respondent.

Jonathan M. Hensley, Jefferson City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CRYSTAL GAYLE ARAGON,

RESPONDENT,

v.

**MISSOURI DEPARTMENT OF
HEALTH AND SENIOR SERVICES,**

APPELLANT.

No. WD72751

Lafayette County

Before Division Two: James M. Smart, Jr., Presiding Judge, Mark D. Pfeiffer, Judge and Cynthia L. Martin, Judge

The Department of Health and Senior Services notified former nursing home employee, Crystal Aragon, of its decision to permanently place her name on the Employee Disqualification List for misappropriating funds from nursing home resident, Donald Witt, while she was employed by the nursing home. Aragon challenged the decision. After an administrative hearing, the decision was affirmed. Aragon appealed. The trial court entered judgment reversing the Department's decision. The Department appealed the trial court's reversal. On appeal, Aragon contends that the Department's determination that Aragon misappropriated funds from a nursing home resident is unsupported by competent and substantial evidence; is unauthorized by law; is arbitrary, capricious or unreasonable; and/or involves an abuse of discretion

The trial court's judgment reversing the Department's decision is affirmed. The cause is remanded for determination pursuant to section 536.087.

DIVISION TWO HOLDS;

(1) We review the actions of an administrative agency to make a single determination whether, considering the whole record, there is sufficient competent and substantial evidence to support the award.

(2) Placement of a person on the Employee Disqualification List pursuant to section 198.090.15 requires a showing of misappropriation while employed by the facility. Misappropriation requires the dishonest diversion of money or property of another to one's own use.

(3) The Department failed to meet its burden of establishing by competent and substantial evidence that Aragon's acceptance of funds from Witt was dishonest and/or the result of the exercise of undue influence. The record contains no evidence that Witt suffered from a mental infirmity at the time he provided financial assistance to Aragon. The record reflected that

Witt was fiercely independent, managed his own finances, and although a paraplegic, was able to come and go from the facility as he pleased in his handicap-adapted van.

(4) Although Aragon's actions violated other statutory provisions and employment policies, without other evidence of dishonesty or undue influence the legislatively required condition precedent to the placement of Aragon's name on the Employee Disqualification List was not established by the Department.

(5) This case is remanded to the trial court for the sole purpose of disposition of Aragon's application for attorney's fees and costs which was filed in the trial court and remains pending pursuant to section 536.087.

Opinion by Cynthia L. Martin, Judge

May 10, 2011

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